

thing in the evidence, or in the nature of the case, which would justify the exertion of this extraordinary power. If the court interposes at all in this form, it must act *ex vigore*, and execute the contract precisely as the parties made it. It must, therefore, decree the delivery of the number of bottles stipulated for in the agreement, and this, too, notwithstanding it is conceded the plaintiff, the husband, did not comply in all respects with the agreement on his part, that is, that he did not deliver the full amount of farm produce, which he contracted to deliver. *Vide Seymour vs. Delancy*, 6 Johns. Ch. Rep., 222.

Under such circumstances, it would surely be better, and more conformable with the justice of the case, in the language of Chancellor Kent, "to submit the case to a jury, where relief could be afforded in damages, with a moderation agreeable to equity and good conscience, and where the claims and pretensions of each party, can be duly attended to and be admitted to govern the assessment."

It is to be recollected, that this is not the case of a vendor retaining the legal title, when according to the opinion of Montgomery County Court, in *Magruder vs. Peter*, 11 Gill & Johns., 229, the lien for the purchase money is equivalent to a mortgage, but the case of a vendor, who has parted with the title, and has nothing but an equity, to pursue the real estate sold in the hands of the vendee, and volunteers claiming under him or his alienees, with notice, when chancery can only afford him relief upon the ground, that his remedy at law is exhausted, or it can be shown that none exists. *Pratt vs. Vanwycks' Exrs.*, 6 Gill & Johns., 495.

Here, according to the views which have been expressed, it does not appear, either that the legal remedy has been exhausted, or that none exists, and, therefore, I am of opinion, that it is not competent for this court to grant the relief prayed by this bill, which must be dismissed, but there are circumstances in the case, which make it proper that it should be done without costs, and accordingly I shall so decree.

---

WILLIAM M. ADDISON for Complainants.

ROBERT J. BRENT for Defendant.